AO 106 (Rev. 04/10) Application for a Search Warrant

UNITED STATES DISTRICT COURT

for the
District of Maine

U.S. DISTRICT COURT
DISTRICT OF MAINE
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In the Matter of the Search of
(Briefly describe the property to be searched or identify the person by name and address)

A blue/black AT&T flip type cellular telephone and a white Apple iPhone seized on November 1, 2016

Case No. 2:16-mj-233-NT

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

A blue/black AT&T flip type cellular telephone and a white Apple iPhone, as more fully described in Attachment A.

located in the ______________ District of Maine, there is now concealed *(identify the person or describe the property to be seized)*:

See Attachment B.

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☑ evidence of a crime;
- ☐ contraband, fruits of crime, or other items illegally possessed;
- ☑ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	*Offense Description*
21 U.S.C. 846 & 841(a)(1)	Conspiracy to Possess With Intent to Distribute, and Distribute, a Controlled Substance

The application is based on these facts:

Please see attached affidavit of FBI Special Agent Patrick Clancy.

- ☑ Continued on the attached sheet.
- ☐ Delayed notice of ______ days (give exact ending date if more than 30 days: __________) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

[signature]
Applicant's signature

Patrick Clancy, FBI Special Agent
Printed name and title

Sworn to before me and signed in my presence.

Date: 11/08/2016

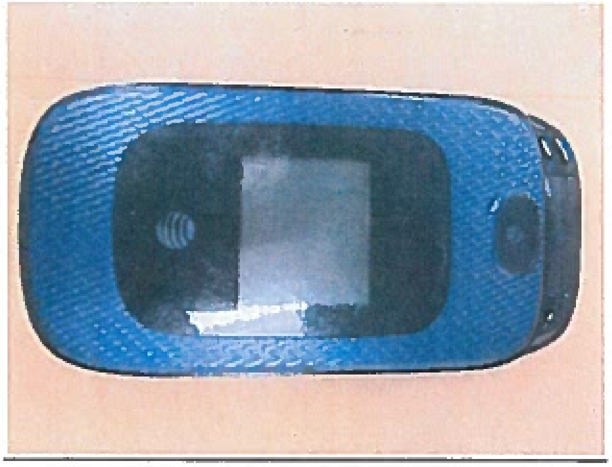
[signature]
Judge's signature

City and state: Portland, Maine

Nancy Torresen, Chief U.S. District Court Judge
Printed name and title

ATTACHMENT A

A blue and black AT&T flip-type cellular telephone seized from the person of Lorenzo Francisco Figuereo during his arrest on November 1, 2016, and a white Apple iPhone model A1533, IMEI 358814054047503, seized on November 1, 2016, from 34 Blake Street, Apartment 1, Lewiston, Maine, depicted below. The two cellular telephones were subsequently transported to, and are currently located at the office of the Portland, Maine FBI.



ATTACHMENT B

All records that relate to violation of Title 21, United States Code, Section 841(a)(1), including:

1. Drug records, address books, calendars and scheduling data, drug notes, drug ledgers, seller lists, buyer lists, or financial records potentially identifying proceeds of the illegal activity;

2. Data indicating outgoing and incoming calls to drug sellers and buyers, or co-conspirators, together with emails, chat, text, or instant messages;

3. Evidence indicating how and when the target phone account was accessed or used, to determine the chronological context of account access, use, and events relating to the crime under investigation and to the cell phone account owner;

4. Evidence indicating the target phone account owner's state of mind as it relates to the crime under investigation;

5. Pictures or videos of drugs or drug associates; and

6. Computer hardware, software, and data contained on the target phone that are the instrumentalities of this crime which are evidence of offenses set forth in Title 21, United States Code, Section 841, et seq.

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

IN THE MATTER OF THE SEARCH OF: A BLUE/BLACK AT&T FLIP-TYPE CELLULAR TELEPHONE AND A WHITE APPLE IPHONE MODEL SEIZED ON NOVEMBER 1, 2016	No. 2:16-mj-233-NT

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR SEARCH WARRANT

I, Patrick Clancy, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a warrant to search and forensically examine the cellular telephones further described below and in Attachment A.

2. This application seeks authority for a warrant to search for evidence, fruits and instrumentalities of violations of, among other statutes, Title 21 U.S.C. Sections 841(a)(1) and 846, which relate to the illegal distribution of controlled substances.

3. I am a Special Agent for the Federal Bureau of Investigation (FBI) and have been employed in that capacity for approximately twelve years. I am currently assigned to the FBI's Boston Division, Portland, Maine, Resident Agency

4. During my employment with the FBI, I have participated in numerous investigations relating to the distribution of controlled substances, including cocaine base and other substances in violation of the federal anti-drug laws, including Title 21, United States

Code, Sections 841 and 846. I have received training in narcotics enforcement and investigations. Based on my training and experience, I am familiar with the habits, methods, routines, practices and procedures commonly employed by persons engaged in the trafficking of illegal drugs. I have been the Affiant on affidavits in support of search warrants, arrest warrants, and other applications to include Title III wiretap orders. I am aware that drug traffickers commonly use cellular telephones in furtherance of their drug trafficking activities and frequently change cellular telephone numbers and cellular telephones in an effort to thwart law enforcement's use of electronic surveillance. I am also aware that drug traffickers often speak in vague, guarded, or coded language when discussing their illegal business in an effort to further prevent detection.

5. Based on my training and experience, and conversations with other law enforcement agents who have conducted controlled substance distribution investigations, I know the following:

a. Distributors of controlled substances often communicate with their co-conspirators using cellular phones and often use multiple cellular telephones to compartmentalize their operations or to avoid detection by law enforcement;

b. Distributors of controlled substances frequently use these cellular telephones to send text messages, emails, and digital photographs to their co-conspirators in furtherance of their criminal activity, including both drug trafficking and the laundering of drug proceeds.

6. Based on my education, training and experience, I also know that electronic storage devices, including cellular telephones and computers, are often password protected or certain information is otherwise difficult to access by law enforcement. In those circumstances,

careful off-site forensic examination of an electronic data storage device by a trained examiner in a forensic laboratory, may result in the recovery of electronic data that has been stored on the device, even if the data was not intentionally stored, was deleted, was password-protected or encrypted, and often even if the device itself has been damaged. Forensic examination of electronic data stored on an electronic data storage device ordinarily involves making an exact duplicate "image" of the data stored on the device and examining the duplicate image rather than the original evidence itself, so as not to cause any changes to the original stored electronic data. Such recoverable electronic data may include records of electronic communications (such as records of incoming and outgoing telephone calls, recorded telephone numbers, recorded voice messages, and text messages), electronic documents and records, personal contact information, photographs or video images, and records or data that demonstrate the identity of the person(s) who owned or exercised dominion or control over the pocket personal computer or the electronic records or data contained therein.

7. Based on the facts contained herein, I have probable cause to believe, and do in fact believe, that Lorenzo Francisco Figuereo possessed with intent to distribute cocaine base, often referred to as crack-cocaine or crack, in violation of 21 U.S.C. Section 841(a)(1), and that a search of the two cellular telephones seized on November 1, 2016, identified and further described in Attachment A of the search warrant will result in the seizure of evidence of illegal drug trafficking as identified in Attachment B.

8. Unless specifically identified as to its source, the information contained in this affidavit is known to me personally or has been related to me by other law enforcement officers.

IDENTIFICATION OF PROPERTY TO BE SEARCHED

9. A blue and black AT&T flip-type cellular telephone seized from the person of Lorenzo Francisco Figuereo during his arrest on November 1, 2016, and a white Apple iPhone model A1533, IMEI 358814054047503, seized on November 1, 2016, from 34 Blake Street, Apartment 1, Lewiston, Maine. The two cellular telephones were subsequently transported to, and are currently located at the office of the Portland, Maine FBI.

FACTS AND CIRCUMSTANCES

10. An FBI Confidential Source (hereinafter "CS-1")[1] has been providing information to law enforcement for several years, and to me for over two years. CS-1's information has been corroborated and determined to be reliable. During a court authorized wiretap, CS-1 was intercepted ordering crack cocaine from a case subject and apparently repaying a debt from a previous illegal drug purchase. The purchases were not under the control of law enforcement. CS-1 was also observed meeting with a case subject. When approached by law enforcement, CS-1 admitted obtaining crack from the subject, and surrendered the crack to law enforcement.

11. In January of 2016, CS-1 told me the following: as of January of 2016, a "Jamaican" male was residing in room 22 of the Lighthouse Inn in Lewiston, Maine. The male drove a gold Mercedes. The male drove a taxi in New York. CS-1 observed the male in possession of a baseball sized bag of packaged-up crack. As of March of 2016, the male, who is black but claims to be Spanish, moved to the front first floor apartment of a brown house at 32

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[1] CS-1 has a criminal history to include a misdemeanor conviction for criminal mischief and convictions for theft. CS-1 has been paid a total of $1,250 in return for the information CS-1 has provided to the FBI in unrelated cases.

Blake Street, Lewiston, Maine. According to CS-1, the male sells crack, marijuana, and pills.[2] I believe based on the foregoing information and other information described herein, that the male CS-1 was referring to is Lorenzo Figuereo.

12. On August 31, 2016, Lewiston Police Department officers responded to 34 Blake Street, Apartment 1, Lewiston, Maine and encountered a male who identified himself as Ferdree Osorio. His 15-year old son was also present. Osorio reported that he had been the victim of a residential burglary where a television, approximately $1,000 in cash and sneakers were allegedly stolen. Based on the information contained herein, I believe that Ferdree Osorio is actually Lorenzo Francisco Figuereo.

13. On November 1, 2016, I participated with other law enforcement officers in the arrest of Lorenzo Francisco Figuereo, who was wanted on federal charges of making false statements on an application for a passport and aggravated identity theft. Among Figuereo's listed aliases were Ferdree Osorio, Fredree Osorio Montanez, Francisco Figueroa, Miguel Romero, Miguel Santana, and Loren Figueroa. Surveillance personnel observed Figuereo walk from the area of the entrance to 34 Blake Street and enter the vehicle which was subsequently stopped by law enforcement personnel.

14. A search of Figuereo's person incident to arrest yielded a blue and black AT&T cellular telephone, $2,935.25 in U.S. currency, and a Time Warner Cable receipt in the name of Ferdree M. Osorio with the address 34 Blake Street, Apt. 1, Lewiston, Maine.

15. I have reviewed Figuereo's criminal history, most of which is under the name of Francisco Figueroa or Ferdree Osario. The history includes the following felony convictions: a

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[2] The only brown house in the vicinity of 32 Blake Street, Lewiston, Maine is 34 Blake Street, Lewiston, Maine. According to public source information, there does not appear to be a 32 Blake Street, Lewiston, Maine.

1989 conviction for criminal sale of controlled substance – 3rd degree; a 1992 conviction for criminal sale of controlled substance – 5th degree; a 1993 conviction for criminal possession of controlled substance – 3rd degree; a 2006 conviction for criminal sale of controlled substance – 5th degree; and a 2008 conviction for criminal possession of controlled substance – 3rd degree, intent to sell.

16. After his arrest, Figuereo was transported to the Lewiston Police Department. Figuereo was advised of his Miranda rights and agreed to answer questions without a lawyer present. During the audio and video-recorded interview, Figuereo advised he drove a taxi in New York. Figuereo also admitted his real name is Lorenzo Figuereo and admitted using the alias Ferdree Osorio. Though he refused to sign a consent form, Figuereo verbally consented to the search of his residence, located at 34 Blake Street, Apt. 1, Lewiston, Maine, where he resides with his 15-year old son. Figuereo denied that anyone else lived at the residence, though his cousin may visit. Figuereo denied being involved in drug trafficking.

17. The search of 34 Blake Street, Apartment 1, Lewiston, Maine, a one-bedroom apartment, yielded the following items:

a. Bank and insurance statements in the name Ferdree Osorio with the address of 34 Blake Street, Apartment 1, Lewiston, Maine;

b. Approximately 76.6 grams of cocaine base packaged in several individually-wrapped corner cut plastic baggies concealed within a brown leather sofa in the living room;[3]

c. A digital scale in a kitchen pantry; and,

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[3] A TruNarc device was used to test a sample of the substance. The device indicated a presumptive positive for cocaine base.

d. A white iPhone model A1533 that was powered on at the time it was located.

18. Among the items displayed on the home screen on the white iPhone was a Facebook message addressed to "Ferdree." My search of Facebook for "Ferdree Osorio" revealed a Facebook page in which the profile picture is Lorenzo Figuereo (a/k/a Ferdree Osorio). In the profile picture, Figuereo is seated on a brown leather sofa.

19. Based on my training and experience, I know that a quantity such as 76.6 grams of crack cocaine, especially packaged as it was in smaller, individually wrapped quantities, is consistent with being destined for further distribution and not personal consumption. I also know that drug traffickers often use digital scales to weigh illegal drugs and that the presence of digital scales is indicative of trafficking. Figuereo's possession of a large amount of U.S. currency would also be consistent with his involvement in the distribution of controlled substances.

NATURE OF EXAMINATION

20. Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrant I am applying for would permit the examination of the devices consistent with the warrant. The examination may require authorities to employ techniques, including but not limited to computer-assisted scans of the entire media, that might expose many parts of the devices to human inspection in order to determine whether there exists evidence as described by the warrant. Moreover, agents may need to create a mirror image of the target phone and search the electronically created mirror image for evidence described by the warrant. The original mirror image will be preserved.

CONCLUSION

21. Based on the foregoing, I have probable cause to believe, and do in fact believe, that Lorenzo Figuereo is involved in the distribution of controlled substances in violation of 21 U.S.C. Sections 841(a)(1) and 846. Furthermore, I believe that the two cell phones seized on November 1, 2016 in Lewiston, Maine, as further described in Attachment A, contain evidence of Figuereo's involvement in the distribution of cocaine base. I therefore respectfully request that this court authorize a search warrant to search and forensically examine those devices.

Dated at Portland, Maine this 8th day of November 2016.

Special Agent Patrick M. Clancy
Federal Bureau of Investigation

Sworn and subscribed before me this 8th day of November 2016.

Nancy Torresen
Chief United States District Court Judge